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#12471

FACT SHEET ON H. R. 12471
THE FREEDOM OF INFORMATION ACT (FOIA) AMENDMENTS

I. INTRODUCTORY NOTE:

On October 17, President Ford vetoed the subject bill. Although the measure pursues laudable goals, it contains certain serious defects which make it unacceptable. This is to urge your support of the President's veto and acceptance of his proposed amendments to the measure.

II. PRINCIPAL DEFECTS:

A. Defense and Foreign Relations Information (Muskie Amendment).

1. Present Law: Classified documents are not obtainable under the FOIA and there is no authority for court review of the propriety of a classification.
2. Enrolled Bill: Authorizes de novo court determination based on in camera inspection of classified documents to determine the propriety of the classification. Burden of proof is on the government.
3. The Problem: Two problems are presented by this provision of the enrolled bill. First, the provision could result in a harmful revelation of reasonably classified defense and foreign relations information. Secondly, while it would be appropriate to have judicial review of a classification, it may be unconstitutional for a court to decide the classification issue de novo -- the court would be exercising a basic Executive function as if it were an agency.
4. President's Suggested Amendment: Would allow for judicial review of classification based upon a "reasonable basis" standard.

B. FBI and Other Investigatory Law Enforcement Files (Hart Amendment).

1. Present Law: "Investigatory files compiled for law enforcement purposes" are exempt from compulsory disclosure.

2. Enrolled Bill: FBI and other investigatory "files" would no longer be exempt; the exemption would apply only to each separate investigatory "record" or "reasonably segregable" portion of a record as to which the government can prove that release "would" cause one of the types of harm to public or private interests listed in A through F of the revised exemption.
3. Discussion: Two problems are presented by this provision of the enrolled bill. First, with respect to some of the harmful effects listed in A through F, it would be virtually impossible to establish that such results "would" be caused while there could often be a substantial possibility that the harm could be as severe as disclosing the identity of an informant whose life could be endangered. Secondly, although the provision seeks to protect confidential information compiled in the course of criminal investigations by agencies with criminal law functions, it would not protect such information in the possession of agencies with civil law functions. There are several agencies with important civil law enforcement functions whose investigations often lead directly to criminal proceeding but these are overlooked by the enrolled bill.
4. President's Suggested Amendment: Would protect information in instances where there is a "substantial possibility" that harm would result and would also protect confidential information relevant to a criminal proceeding which is in the possession of a civil law agency.

C. Fees for Examination of Voluminous Records.

1. Present Law: Fees for services incident to the production of documents may be charged under the federal user charge statute, 31 U.S.C. 438a, and agency regulations.
2. Enrolled Bill: No fees can be charged for any services except search (i.e., finding the requested records) and duplication.
3. Discussion: It is one thing to say that records should be released to the public where release will not cause serious harm of the sort covered by the disclosure exemptions. It is quite another thing to impose upon the government

(ultimately the taxpayer) the obligation of converting its innumerable records into a form which can be released without causing such harm. It is the latter task which the enrolled bill imposes, by its requirement that "reasonably segregable" nonexempt portions of requested records be released. This "segregation" requires a line-by-line examination of the requested documents or files, to delete where possible only those portions that are exempt. For example, a request for available information from the FBI's 2,000,000-page file on the Communist Party could involve millions of dollars in expenditures.

4. President's Suggested Amendment: Would require these services without charge only up to the amount of \$100.

III. CONCLUSION:

Support the President's veto of H. R. 12471 and pass a clean bill incorporating his suggested amendments.